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ENVIRONMENTAL ASSESSMENT BOARD

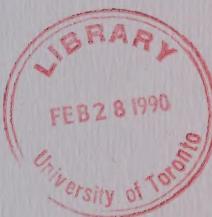
VOLUME: 182

DATE: Monday, February 12, 1990

BEFORE:

A. KOVEN, Chairman

E. MARTEL, Member

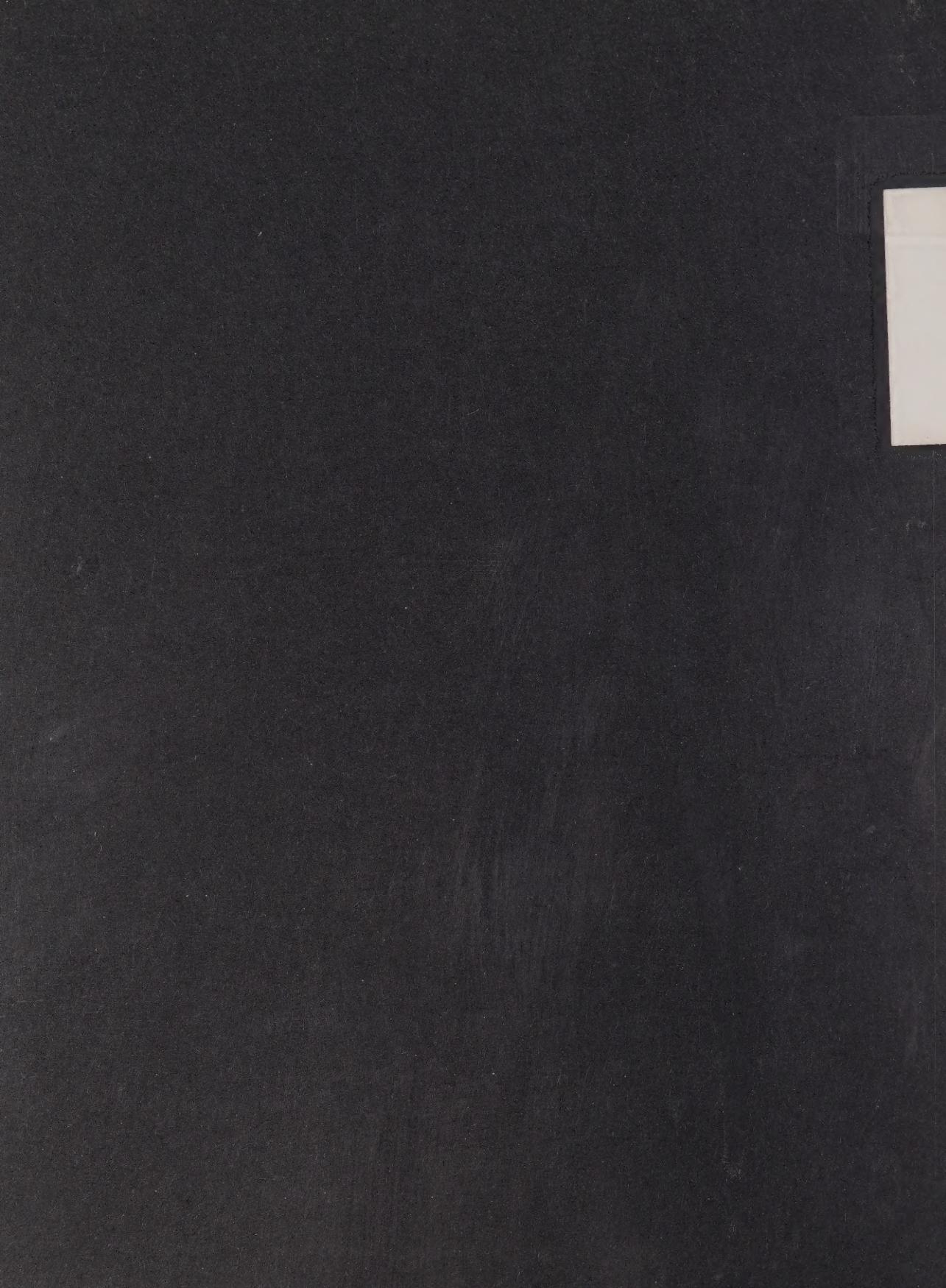


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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER OF a Notice by the
Honourable Jim Bradley, Minister of the
Environment, requiring the Environmental
Assessment Board to hold a hearing with
respect to a Class Environmental
Assessment (No. NR-AA-30) of an
undertaking by the Ministry of Natural
Resources for the activity of timber
management on Crown Lands in Ontario.

Hearing held at the Offices of the
Environmental Assessment Board,
2300 Yonge Street, Suite 1201, Toronto,
Ontario, on Monday, February 12th,
1990, commencing at 10:00 a.m.

VOLUME 182

BEFORE:

MRS. ANNE KOVEN
MR. ELIE MARTEL

Chairman
Member



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(i)

A P P E A R A N C E S

MR. V. FREIDIN, Q.C.)	
MS. C. BLASTORAH)	MINISTRY OF NATURAL
MS. K. MURPHY)	RESOURCES
MS. Y. HERSCHER)	
MR. B. CAMPBELL)	
MS. J. SEABORN)	MINISTRY OF ENVIRONMENT
MS. B. HARVIE)	
MR. R. TUER, Q.C.)	
MR. R. COSMAN)	ONTARIO FOREST INDUSTRIES
MS. E. CRONK)	ASSOCIATION and ONTARIO
MR. P.R. CASSIDY)	LUMBER MANUFACTURERS'
	ASSOCIATION
MR. H. TURKSTRA	ENVIRONMENTAL ASSESSMENT BOARD
MR. E. HANNA)	
DR. T. QUINNEY)	ONTARIO FEDERATION OF ANGLERS & HUNTERS
MR. D. HUNTER)	
MS. N. KLEER)	NISHNAWBE-ASKI NATION and WINDIGO TRIBAL COUNCIL
MR. J.F. CASTRILLI)	
MS. M. SWENARCHUK)	
MR. R. LINDGREN)	FORESTS FOR TOMORROW
MR. P. SANFORD)	
MS. L. NICHOLLS)	KIMBERLY-CLARK OF CANADA
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MR. Y. GERVAIS)	
MR. R. BARNES)	ONTARIO TRAPPERS ASSOCIATION
MR. R. EDWARDS)	
MR. B. McKERCHER)	NORTHERN ONTARIO TOURIST OUTFITTERS ASSOCIATION

(ii)

APPEARANCES: (Cont'd)

MR. L. GREENSPOON) MS. B. LLOYD)	NORTHWATCH
MR. J.W. ERICKSON, Q.C.) MR. B. BABCOCK)	RED LAKE-EAR FALLS JOINT MUNICIPAL COMMITTEE
MR. D. SCOTT) MR. J.S. TAYLOR)	NORTHWESTERN ONTARIO ASSOCIATED CHAMBERS OF COMMERCE
MR. J.W. HARBELL) MR. S.M. MAKUCH)	GREAT LAKES FOREST
MR. J. EBBS	ONTARIO PROFESSIONAL FORESTERS ASSOCIATION
MR. D. KING	VENTURE TOURISM ASSOCIATION OF ONTARIO
MR. D. COLBORNE) MS. S.V. BAIR-MUIRHEAD)	GRAND COUNCIL TREATY #3
MR. R. REILLY	ONTARIO METIS & ABORIGINAL ASSOCIATION
MR. H. GRAHAM	CANADIAN INSTITUTE OF FORESTRY (CENTRAL ONTARIO SECTION)
MR. G.J. KINLIN	DEPARTMENT OF JUSTICE
MR. S.J. STEPINAC	MINISTRY OF NORTHERN DEVELOPMENT & MINES
MR. M. COATES	ONTARIO FORESTRY ASSOCIATION
MR. P. ODORIZZI	BEARDMORE-LAKE NIPIGON WATCHDOG SOCIETY

(iii)

APPEARANCES: (Cont'd) -

MR. R.L. AXFORD	CANADIAN ASSOCIATION OF SINGLE INDUSTRY TOWNS
MR. M.O. EDWARDS	FORT FRANCES CHAMBER OF COMMERCE
MR. P.D. McCUTCHEON	GEORGE NIXON
MR. C. BRUNETTA	NORTHWESTERN ONTARIO TOURISM ASSOCIATION

1 ---Upon commencing at 9:55 a.m.

2 MADAM CHAIR: Good morning, ladies and
3 gentlemen. Please be seated.

4 The parties were informed on Friday
5 afternoon, February 9th, that Mr. Jeffery has resigned
6 effective that day as Chairman of the Timber Management
7 Hearing.

8 I have been appointed as Chairperson of
9 this panel. Mr. Martel will continue as Vice-Chairman
10 of the Board and a member of the Timber Management
11 Hearing panel. I am also a Vice-Chairman of the
12 Environmental Assessment Board now. Mr. Jeffery also
13 resigned his position as Chairman of the Environmental
14 Assessment Board, his successor is Grace Patterson.

15 It is the intention of Mr. Martel and
16 myself that we will continue this hearing following the
17 format and procedures to which we have adhered since
18 the commencement two years ago. We are in the process
19 of retaining the services of legal counsel to be
20 available as we see fit.

21 At Mr. Jeffery's request I will read into
22 the record the text of his letter of resignation.
23 Following this any parties who may wish to speak to the
24 Board on these matters may do so.

25 We are in receipt of a request from Mr.

1 Cosman to adjourn the hearing this week and we will be
2 calling upon him to speak first.

3 Mr. Jeffery's letter of resignation dated
4 February 9th, 1990:

5 "It is with profound regret that I must
6 inform you of my resignation as Chairman
7 of the Environmental Assessment Board and
8 as Chairman of the panel hearing the
9 Timber Management Class EA application.

10 As some of you may be aware, my father
11 has recently become seriously ill and it
12 is now necessary for me to be available
13 to provide the necessary assistance and
14 support to my parents, both of whom are
15 approaching 80 years of age.

16 This proceeding has been particularly
17 trying on all of us who have been
18 separated from family and friends for
19 long periods of time and, as you can
20 appreciate, my wife and four children
21 have seen little of me over the past 21
22 months.

23 Since joining the Environmental
24 Assessment Board in 1981 and as its
25 Chairman since 1986 I have always

1 endeavored to serve the public interest
2 to the best of my ability. The situation
3 surrounding my father's illness, however,
4 has compelled me to consider seriously my
5 family responsibilities and take such
6 action as I feel is right in these
7 circumstances. All of us are given only
8 one set of parents and mine have always
9 been there for me in time of need.

10 A decision of this nature is never easy
11 and after a great deal of reflection I
12 have decided that I can no longer abandon
13 my family to the demands of both the
14 Board and this hearing. Accordingly, I
15 have decided to leave the public sector
16 effective immediately.

17 In doing so, however, I want to take this
18 opportunity to sincerely thank all of you
19 for your courtesy, support and I hope
20 respect over the years and throughout
21 this entire proceeding to date, and am
22 confident that my colleagues on the panel
23 will continue to enjoy the same in the
24 months to come.

25 The hearing will continue before the

remaining panel members as scheduled.

Yours sincerely,

Michael Jeffery."

Mr. Cosman, would you like to speak to

the board?

MR. COSMAN: Yes. Thank you, Madame

Chairman.

On Friday afternoon, along with other counsel, I received a letter from Mr. Jeffery informing us of his resignation from the Board and from this panel.

After 20 months of evidence I can say that it came as a shock and, after consulting with counsel for the Ministry of Natural Resources and counsel for the Ministry of the Environment, I informed the Board and the parties by fax that in the circumstances it would be inappropriate to proceed this week with evidence. I require an opportunity to consider the legal and other ramifications of this situation and to receive instructions from our clients.

In that conclusion, as to the hearing not proceeding this week, both counsel for the MOE and counsel for the MNR indicated they agreed. I did not have the opportunity given the late time of the receipt of the letter to obtain a similar agreement from other

1 parties, but I did fax all full-time parties with a
2 copy of my letter.

3 I hope to meet with our clients before
4 the end of this week to obtain their instructions and
5 thereafter will inform the Board of our positions.

6 Firstly, I know I speak for all counsel
7 in saying that they sympathize with Mr. Jeffery whose
8 family situation compelled him to make the decision he
9 did. We know that he applied himself diligently to
10 this case for the past 20 months. We are indeed
11 fortunate to have two members remaining on the panel
12 whom we respect and who are willing to proceed with the
13 hearing.

14 I am not here today to make submissions
15 or to provide you with a position with respect to a
16 number of outstanding issues because, frankly, given
17 the late announcement on Friday, I was unable to get
18 together the clients for whom I act to review the
19 matter with them and seek their instructions. However,
20 I thought it might be helpful to the Board and to the
21 parties to perhaps - without argument - put a few of
22 those issues before you, Madame Chairman, Mr. Martel,
23 so that we can address it in due course should it
24 become necessary.

25 There are legal, practical and policy

1 considerations. First of all, legal. Unlike many
2 other pieces of legislation in Ontario and federally
3 which have a specific provision which permits a
4 tribunal to proceed with a hearing where a member
5 becomes incapacitated or is otherwise unable to
6 continue, the Environmental Assessment Act is not clear
7 on this issue. There is a provision of the Act,
8 18(13) - and, as I say, I am not going to argue the
9 issue at this point - but that seems to be the only
10 section which provides for less than a quorum to hear
11 an application before this Board, and 18(13) seems to
12 be speaking to the appointment of less than a quorum
13 rather than the continuation of a hearing.

14 In the Halton case which you, as members,
15 are aware, in the Halton case, where a similar
16 situation developed, that particular hearing was held
17 under the Consolidated Hearings Act which has a
18 specific provision to address this. In any event, this
19 is something that we are going to have to consider
20 legally and come back to you with if we think there is
21 a difficulty.

22 We certainly do not want to continue if,
23 for some reason or other, we are going to be faced with
24 a court challenge by someone later down the road which
25 would cause all of the time and commitment of the

1 persons involved to be thrown away. So that is the
2 legal issue that I will be researching, considering and
3 addressing the Board on.

4 Secondly, are sort of legal and
5 practical. You have indicated that you will be seeking
6 full-time counsel to assist you and, as we know, there
7 have been any number of legal, procedural and
8 jurisdictional issues raised in the course of this
9 hearing. The former Chairman played an important role
10 in that regard with his legal training and this Board,
11 I think quite fairly, recognizes that the presence of
12 legal counsel to assist it is going to be necessary for
13 the balance of the hearing.

14 But there are some other aspects of this
15 which need to be considered; and, that is, that legal
16 counsel is not, and the Board does not I am sure,
17 consider that legal counsel will sit with the Board and
18 participate in the hearing in any way other than to
19 provide legal advice, because it would be entirely
20 inappropriate and illegal for legal counsel to discuss
21 the evidence with the Board and to otherwise
22 participate in the decision-making of the Board on any
23 of the issues that arise before the Board. What legal
24 counsel would do would be provide advice and the Board
25 would make a decision on the basis of that advice and

1 the submissions of other counsel. And it's very
2 important that the Board recognize that role.

3 The practical problem is that whoever one
4 obtains as legal counsel for the Board, knowing that
5 that person cannot discuss the issues and the merits
6 with the Board other than to assist the Board with
7 legal advice and to provide the other parties with the
8 opportunity to address the Board with respect to any
9 such legal advice given, when we go back to Thunder Bay
10 I can see great practical difficulties in the isolation
11 of that legal counsel, because that legal counsel may
12 dine with the Board or may otherwise socialize with the
13 Board as long as that person does not discuss the case
14 with the Board, and I can just see a practical problem
15 there. But, in any event, I am just at this point in
16 time underlining for purposes of our consideration and
17 future submission to you.

18 MADAM CHAIR: Yes, Mr. Cosman, and I
19 would add to that: We haven't decided whether we are
20 going to retain someone on a full-time basis or not.
21 We are going through that now.

22 MR. COSMAN: Thank you, Mrs. Koven.
23 And the final point which is an issue
24 that obviously has to be considered by all and this
25 Board obviously has made its decision in that regard,

1 is the policy issue of whether a quorum as defined in
2 the Act ought to hear a case such as this.

3 The complexity of the case, the immensity
4 of the case, the extent of the undertaking is
5 breathtaking and it is the kind of case where obviously
6 it would have been preferable to have three persons
7 decide; but, in any event, that is now a matter of
8 policy which must be considered in the hopper with the
9 other matters.

10 But on these and other issues I wish to
11 tell you that after I meet with my clients this week,
12 review the matter, conduct the necessary legal
13 research, I will be reporting back to the Board with
14 our position. And unless the Board otherwise directs
15 or unless our position is otherwise, that we are
16 proceeding, then I will be prepared to proceed on March
17 5th with Panel 2, if that is the Board's wish.

18 If for legal reasons or other reasons
19 there is some difficulty with that, I will advise the
20 Board as soon as I receive my instructions.

21 MADAM CHAIR: Thank you, Mr. Cosman.

22 Do any of the other parties wish to speak
23 to the Board?

24 MR. FREIDIN: No, other than to support
25 Mr. Cosman in his request for an adjournment for the

1 one remaining week prior to the negotiations.

2 MS. SEABORN: Mr. Cosman is correct that
3 he advised me late on Friday that he would not be in a
4 position to call evidence this week because he did want
5 to seek instructions from his client. He said at the
6 outset that MOE supported his position.

7 I just want to make it clear on the
8 record that we supported, under the circumstances, his
9 request for an adjournment so he could seek his
10 instructions, but I take no position today on the three
11 issues, legal and policy, that he's raised in front of
12 the Board, and I just want that to be clear to the
13 Board Members.

14 MADAM CHAIR: Yes.

15 MS. SEABORN: That at this stage we are
16 making no submissions as to whether or not Mr. Cosman
17 is correct or incorrect in terms of the legal arguments
18 he's advanced.

19 MS. SWENARCHUK: No submissions.

20 MADAM CHAIR: Do you have anything to
21 add, Mr. Quinney?

22 DR. QUINNEY: Not this morning, Mrs.
23 Koven.

24 MADAM CHAIR: Yes. I think we shall --
25 yes, sir?

1 MR. AIRD: I asked Mr. Cosman if
2 part-time parties are receiving correspondence from
3 him, because part-time parties are -- some of them are
4 entitled to receive full-time correspondence.

5 MADAM CHAIR: Yes. Could you identify
6 yourself, sir?

7 MR. AIRD: Paul Aird.

8 MADAM CHAIR: Mr. Aird. You are
9 referring to the letter that Mr. Cosman sent to the
10 Board on Friday.

11 MR. AIRD: Yes.

12 MADAM CHAIR: I don't know to which
13 parties that letter was sent.

14 MR. COSMAN: Madame Chairman, I believe
15 the order of this Board was, with respect to
16 correspondence in due course, that it be provided to
17 all full-time parties, but I can check that provision.

18 On Friday I essentially wanted to let the
19 parties know who were going to be here that that was
20 going to be our position so they wouldn't spend the
21 weekend, as I had intended to do, in preparing evidence
22 for today. So, in that regard, I would have to check.

23 I am not sure. Perhaps Mr. Aird can
24 identify the group he's associated with and I will
25 check to see if in fact he was sent that particular

1 letter. But, otherwise, I will be very happy to
2 provide him with a copy.

3 MR. AIRD: Madame Chairman, I am a
4 part-time party and as a part-time party it was my
5 understanding that those of us who said we would like
6 to receive full-time correspondence were to receive it.
7 But I can assure you that we are not in many cases, and
8 this is just one other time.

9 MADAM CHAIR: All right. Thank you, for
10 bringing that to my attention, Mr. Aird, and we will
11 look into that.

12 I know that there have been difficulties
13 in the past. There is a great deal of material
14 generated by the hearing that is sent around to a
15 number of parties. It has been my assumption that
16 information that has to deal with the important aspects
17 of the hearing is receiving a wide distribution,
18 including part-time parties, who have shown an ongoing
19 interest in the hearing. We will endeavor to make sure
20 this doesn't happen again.

21 As you can appreciate, this is a very
22 confusing time for all of us. I must say that when I
23 returned home from the weekend I was surprised to learn
24 of the events of late last week and also Mr. Cosman's
25 letter. I think had this occurred mid-week or had we

1 been available to one another, perhaps Mr. Cosman might
2 have asked leave of the Board to adjourn this week.
3 This letter was quite a surprise. We expected to show
4 up and start Panel 2 today. I can fully understand
5 though why the parties are confused and feel that we
6 need an adjournment to sort out of some of these
7 problems.

8 And I am sorry, Mr. Aird, if you came in
9 from out of town expecting to continue with the case.

10 I think what we will do now is we will --
11 Ms. Swenarchuk?

12 MS. SWENARCHUK: No submissions.

13 MADAM CHAIR: I think we are going to
14 take a 20-minute break and return.

15 ---Recess taken at 10:15 a.m.

16 ---On resuming at 10:35 a.m.

17 MADAM CHAIR: Please be seated.

18 We have decided that we will grant an
19 adjournment until Wednesday morning at 10:00 a.m. at
20 which time we will be prepared to listen to the
21 arguments and statements of the various parties. We
22 think it's fair that you should have an opportunity to
23 speak to the Board about your concerns with respect to
24 the departure of Mr. Jeffery.

25 As I mentioned earlier, we had fully

1 intended to proceed today and we are somewhat surprised
2 that Mr. Cosman was not prepared to go ahead with his
3 witnesses.

4 We can understand the timing, Friday was
5 a very precipitous sort of time to get this news, but
6 we think it was presumptuous of a party not to be
7 prepared to go ahead before the Board despite this.

8 We will be back on Wednesday at 10:00
9 a.m. to listen to your concerns and at that time we
10 will have lost a week of evidence. Obviously the week
11 is going past us and we will have lost a week of
12 evidence, and that is what has resulted from this,
13 however, we will discuss that on Wednesday.

14 And that is all we have to say at this
15 point.

16 MR. FREIDIN: What time on Wednesday,
17 Mrs. Koven?

18 MADAM CHAIR: 10:00 a.m.

19 MR. COSMAN: If I may, Madame Chairman,
20 with respect to the Board's concern.

21 As you know, I was pushing very hard to
22 go this week and wanted our evidence to go and there
23 was some concern by some of the parties that perhaps we
24 shouldn't because cross-examination might not even be
25 completed.

1 It's not my practice at all to be
2 presumptuous before a tribunal or a court. It is
3 having received the letter when I did, at the time when
4 I did from the Board, I attempted to speak to someone
5 at the Board with authority, unfortunately there just
6 was no one available, notwithstanding my attempts, up
7 until 5:15 on Friday afternoon and, at that point in
8 time, in the circumstances, I didn't want the parties
9 to spend the weekend and perhaps the Board spend the
10 weekend preparing when it was clear that, in the
11 circumstances, there were legal issues that had to be
12 resolved and practical and policy issues that had to be
13 resolved.

14 If I knew where to reach you, I might
15 have called you if I had known you were going to be the
16 Chairman of this Panel. Those issues weren't resolved
17 at all as of the end of the day on Friday, it was only
18 this morning we know that that is the case.

19 I can assure you that our clients have
20 always pushed, as you know, to insist that evidence
21 proceed expeditiously and in no way have we ever done
22 anything to cause a delay in this proceeding, and I
23 would not want the Board to think that that is the
24 case.

25 MADAM CHAIR: Thank you, Mr. Cosman.

1 Is there anything else?

2 Okay. We will adjourn now until

3 Wednesday at 10:00 a.m.

4 ---Whereupon the hearing adjourned at 10:40 a.m., To be
5 reconvened on Wednesday, February 14th, 1990,
6 commencing at 10:00 a.m.

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